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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

No. 772

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC.,
Petitioner,

v.

STATE OF ARKANSAS, EX REL. BRUCE BENNETT,
Attorney General.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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STATE OF ARKANSAS, *ex rel.* BRUCE BENNETT, Attorney General.

———o———

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Arkansas entered in the above-entitled cause on December 22, 1958. Petition for rehearing was denied on January 19, 1959, and the mandate of the court stayed pending application for a writ of certiorari and disposition thereof by this Court.

Opinions Below

The opinion of the court below is not yet reported and is printed in the Appendix hereto at page 15, *infra*. The order of the Chancery Court of Pulaski County entered on November 12, 1957, the validity of which is at issue, is printed in the Appendix hereto at page 11, *infra*.

Jurisdiction

The judgment of the Supreme Court of Arkansas was entered on December 22, 1958 (R. 21), and is printed *infra* at page 17. Rehearing was denied on January 19, 1959 (R. 55), and the order thereon is printed in the Appendix hereto at page 17, *infra*. Jurisdiction of this Court is invoked under Title 28, United States Code, § 1257(3), petitioner having claimed in the courts below rights and privileges conferred by the Constitution and laws of the United States.

Question Presented

Whether petitioner, in litigation ostensibly involving its liability for seven years' delinquency in the payment of annual state corporation taxes, may be required to disclose records or documents listing the names and addresses of its officers, agents, servants, employees or representatives in Arkansas, the names and addresses of officers, agents, servants and employees or representatives of the NAACP State Conference of Branches (the state organization) and the names and addresses of the officers, agents, servants and employees or representatives of all local branches of the NAACP in Arkansas, without violating the rights of petitioner, and its members in Arkansas, to freedom of association as protected by the Fourteenth Amendment to the Constitution of the United States?

Statement

On August 26, 1957, the State of Arkansas on the relation of its Attorney General, Bruce Bennett, filed a complaint in the Chancery Court of Pulaski County, asserting that petitioner, as a foreign corporation qualified to do business under the laws of the State of Arkansas, was required to pay an annual corporation tax in the amount

of $50 per annum; and that petitioner had been doing business for seven years, without having paid the aforesaid tax. Judgment in the sum of $350, plus penalties and costs was prayed for (R. 2, 3).

On August 30, 1957, in connection with this litigation, respondent served upon Mrs. Daisy Bates, as President of the Arkansas State Conference of NAACP Branches, interrogatories to the following effect: whether the NAACP had solicited funds in Arkansas and for how long; requesting the names of the various branches of the NAACP in Arkansas; the names and addresses of the officers of such branches and the names and addresses of the officers who make up the Arkansas State Conference of Branches; whether the local branches made financial and membership reports to the Arkansas State Conference of Branches; requesting to be advised of the location of records, files, papers, deposit slips, cancelled checks, etc., of the Arkansas State Conference of Branches; requesting the names of the attorneys of the Arkansas State Conference of Branches or any local branches on retainer; whether any member of the NAACP in Arkansas had communicated with the national or regional offices of the NAACP or with any officer of the NAACP Legal Defense and Educational Fund with regard to sending an attorney into the state to bring suit in any state or federal court; whether donors of the NAACP had been informed that contributions were tax exempt, and a list of the checks received in the last seven years which indicated that tax deduction would be claimed from the federal government; whether prior to April 29, 1957, any local branch solicited or received contributions, and a list of the contributions received.

On September 13, 1957, Mrs. Bates answered the interrogatories as follows: that she was the President of the Arkansas State Conference of Branches; that the Little Rock Branch of the NAACP has solicited and received donations within the state, and that such solicitations had

been taking place for several years; listing the branches of the NAACP in the state but refusing to give the names and addresses of the officers of the Arkansas State Conference of Branches or of the local branches; stating that public opinion was hostile to persons working for desegregation in the state, and that to give the names of such persons would expose them to reprisals, intimidation and unwarranted hardships merely because they had associated together for the purpose of securing the rights of Negroes; that the branches made no financial reports to the Arkansas State Conference of Branches, but she declined to give any information about the location of records, files, correspondence, deposit slips, etc., of the Association; that no attorney was on a retainer of the Arkansas State Conference of Branches, and to her knowledge no branch had paid funds to an attorney, except $250 paid to Wiley Branton, Esq.; that neither the Arkansas State Conference nor local branches had informed donors that contributions to the NAACP were tax exempt, and no donor to the NAACP had indicated that his or her donation was to be regarded as tax exempt; that the Arkansas State Conference of Branches had communicated with the national and regional offices of the NAACP and with the N.A.A.C.P. Legal Defense and Educational Fund, Inc. in regard to litigation in Arkansas, but no request had been made to send any attorney to bring suit in court (Appended as an Exhibit in the record between R. 42 and R. 43).

On September 30, 1957, the State filed a motion seeking discovery under Act 335, Arkansas Acts of 1953, 9. The information sought included the identification and addresses of the officers, agents, servants, employees and representatives of the petitioner, the State Conference of NAACP branches and all the local NAACP branches; the records (financial and otherwise), files, papers, correspondence, deposit slips, cancelled checks and reports and publications of the petitioner and of the Arkansas State Con-

ference of Branches of the NAACP; books, records and/or documents listing persons in Arkansas donating to petitioner and to the Arkansas State Conference of Branches, and the amounts received from each for seven years past. Respondent alleged that the documents were indispensable to the prosecution of this action (R. 7, 8).

Petitioner resisted the motion on the ground that it was premature (R. 11), and that disclosure of the names and addresses requested would be an invasion of free speech and freedom of association guaranteed by the Constitution of the United States and the Constitution and laws of the State of Arkansas (R. 12).

Testimony was offered, which the trial court ruled inadmissible, to show that the disclosure of the names and addresses requested would result in the harassment and intimidation of the persons named (R. 27-34), and that the purpose of the Attorney General's motion was to harass, intimidate and injure petitioner and its members (R. 34).

On October 10, 1957, the trial court overruled petitioner's objections and stated that the documents were not constitutionally privileged and issued an order requiring disclosure of the following:

1. Books, records and/or documents of the defendant corporation listing the names and addresses of the officers, agents, servants, employees or representatives in Arkansas and the names and addresses of the officers, agents, servants, employees or representatives of the NAACP, Arkansas State Conference of Branches. 2. Books, records and/or documents of the defendant corporation and/or of the NAACP, Arkansas State Conference of Branches, listing the names and addresses of the officers, agents, servants, employees or representatives of the various local branches of the Arkansas State Conference of Branches of the NAACP. 3. Records, financial and otherwise, files, papers, correspondence, deposit slips, cancelled checks, re-

ports and publications of the defendant and of the NAACP, Arkansas Conference of Branches. 4. Statements showing the aggregate amounts of donations and/or contributions from Arkansas for the past seven years.

It granted petitioner's request to deposit under protest the amount in issue in the litigation in lieu of compliance with the order to produce and to abide by the final outcome of this action (R. 13).

On December 30, 1957, the court rendered default judgment against petitioner because of its refusal to comply with the aforesaid order to produce, but refused to hold petitioner in contempt because the amount in controversy had been deposited in court (R. 19-21). On the same day, the court denied a motion to impound the records of the petitioner in view of a stipulation by the parties in which it was agreed that the issues on appeal would be confined to the sole question of the legality of the court's order of October 10, 1957, insofar as it related to the granting of respondent's motion for discovery, and upon the further agreement of petitioner in open court that if final determination by the appellate courts, including the Supreme Court of the United States, should be that the circuit court had correctly found the records ordered produced not to be privileged, the sum deposited in the court in lieu of compliance with the court's order would be paid to the state in satisfaction of its claim.

On appeal to the Supreme Court of Arkansas, the judgment and order below were affirmed on December 22, 1958. It found no rights of free speech or association violated and held that the judgment and order were not in conflict with this Court's decision in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449, and that the order to produce did not require the production of petitioner's membership list. Rehearing was denied and petitioner files this petition in this Court.

Reasons for Allowance of the Writ

This same issue was before this Court in *National Association for the Advancement of Colored People* v. *Alabama*, *supra*, and the decision of the Supreme Court of Arkansas in this cause is in direct conflict with the decision of this Court in that case.

Petitioner does not question the order insofar as it relates to records, files, papers, correspondence, deposit slips, cancelled checks, reports and publications of petitioner and of the NAACP Arkansas State Conference of Branches or to a statement of the aggregate amount of donations received by petitioner during the period involved. Nor does petitioner question the state's right to know the names and addresses of its officers, agents, servants, employees or representatives in Arkansas, as long as such order relates to such persons who are direct corporate officers, agents, servants, employees or representatives. Since petitioner has registered with the Secretary of State as a foreign corporation and has designated an agent for service, information in this respect is already on file, and petitioner would have no hesitancy about furnishing said information again. In registering as a foreign corporation, it was necessary for petitioner to file its Articles of Incorporation, list the members of its Board of Directors, its officers and agents. It seemed obvious, therefore, that the state's motion was not concerned with discovery as to those persons. It has no corporate agents, officers, employees or representatives other than those named. Nor does petitioner question the validity of the order insofar as it would require the disclosure of the names of any paid officer or representative of any of petitioner's affiliates.

In the court below and in the Supreme Court, petitioners' objection to the order was in regard to its requirement that names and addresses of officers and members of local affiliates be furnished the Attorney General. The Supreme Court of Arkansas has construed the order in issue as not

requiring the general membership list. However, even as construed, the order requires disclosure of the names and addresses of the officers, agents, members, servants, employees or representatives of the Arkansas State Conference of Branches and of the local branches of the NAACP.

The Arkansas State Conference of Branches is a state organization of all the local branches in Arkansas. Both the officers of the State Conference of Branches and the officers of local branches are unpaid volunteers. In her answer to interrogatories (appended in the record between R. 42 and R. 43), Mrs. Bates stated that there are 27 NAACP branches in the state. Most of these branches are located in small towns. The officers and members of these various branches, despite the unpopularity of their views in the communities in which they live, hold fast to a conviction that racial discrimination is an evil which must be removed from American life. They advocate such ideas under petitioner's aegis.

The state scrutiny involved here requiring the identification of various officers and representatives of local branches is an effective restraint upon the exercise of the right of freedom of speech and association by these persons. See *Sweezy* v. *New Hampshire*, 354 U. S. 234, 265. They advocate dissident views in a hostile climate, and while the strong may persist, despite these restraints, in the exercise of their rights, it is the weak that constitutional guarantees of personal freedom must protect, if they are to be meaningful in the preservation of individual liberty.

Moreover, it is clear that the Attorney General has no need for the disclosure of the officers of the Arkansas NAACP affilates in order to determine whether petitioner is liable for the assessment claimed in this action. Indeed, there is no doubt that the sole purpose and intent here is to seek to use state power to harass and intimidate Arkansas residents associated together in the petitioner

organization. Petitioner submits that the rationale in *National Association for the Advancement of Colored People* v. *Alabama, supra*, applies here, and that, under the rationale of that case, the judgment below must fall.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition for writ of certiorari should be granted and the judgment of the court below reversed.

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Appendix

Chancery Court, Pulaski County
Order, Entered November 12, 1957

On this day came on for hearing the motion of the plaintiff requesting the defendant to produce for inspection, copying, reproducing, etc., certain books and records of the defendant, the plaintiff appearing as attorney *pro se*, and by Roy Finch, Jr., Chief Assistant Attorney General, and the defendant appearing by its attorneys, George Howard, Jr. and Frank D. Reeves.

The defendant orally requests a postponement of the hearing of plaintiff's motion pending a ruling from the Court on defendant s demurrer previously filed and the Court hereby denies the request, but orders immediate hearing on the demurrer, to which the defendant objects and requests that the same be noted of record which is accordingly done.

Upon hearing argument on defendant's demurrer to the effect that the complaint does not state facts sufficient to constitute a cause of action in that (a) the complaint does not allege compliance with the statutory procedure for notifying defendant of its tax liability and demanding payment, 84-1834; (b) that the defendant is a corporation "for profit"; or (c) that the defendant was "qualified to do business under the laws of the State of Arkansas" during each of the seven years for which recovery is sought, the Court hereby overrules the demurrer, to which the defendant objects and requests that the same be noted of record which is accordingly done.

The defendant moves to postpone the hearing of plaintiff's motion pending the filing of its answer herein, on the ground that pending answer there are no issues of fact joined between the parties with reference to which the Court may determine the relevancy or materiality of the discovery requested by plaintiff's motion, which motion

is hereby denied by the Court; to which the defendant objects and asks that the same be noted of record which is accordingly done.

From the proof, matters, testimony and things presented to the Court, and the Court being well and sufficiently advised as to all matters of fact and law arising herein, the Court finds that:

1. The defendant had adequate legal notice of the hearing on the plaintiff's motion.

2. The plaintiff's motion should be granted as hereinafter stated, pursuant to Act 335, Ark. Acts of 1953.

3. The records requested are in the exclusive custody and control of the defendant and the plaintiff has no access thereto.

4. The defendant has refused to allow the plaintiff access to the records in question.

5. None of the records requested are privileged as asserted by defendant, under the Constitution or laws of the State of Arkansas or of the United States.

6. That the testimony offered by defendant from Mrs. Daisy Bates and Attorney General Bruce Bennett is inadmissible, to which the defendant objects and asks that the same be noted of record which is accordingly done.

IT IS, THEREFORE, ORDERED, CONSIDERED, ADJUDGED AND DECREED THAT the plaintiff's motion be and it is hereby granted, and the defendant is ordered to produce for the plaintiff's inspection, copying, reproducing, photographing, and or photostating, the following records in the defendant's custody, or in the custody of Mrs. Daisy Bates, President of the Arkansas State Conference of Branches of the

NAACP, or any other person having custody or control thereof, including but not limited to Arkansas and/or New York:

1. Books, records and/or documents of the defendant corporation listing the names and addresses of the officers, agents, servants, employees or representatives in Arkansas and the names and addresses of the officers, agents, servants, employees or representatives of the NAACP, Arkansas State Conference of Branches.

2. Books, records and or documents of the defendant corporation and/or of the NAACP, Arkansas State Conference of Branches, listing the names and addresses of the officers, agents, servants, employees or representatives of the various local branches of the Arkansas State Conference of Branches of the NAACP.

3. Records, financial and otherwise, files, papers, correspondence, deposit slips, cancelled checks, reports and publications of the defendant and of the NAACP, Arkansas Conference of Branches.

4. Statements showing the aggregate amounts of donations and/or contributions from Arkansas for the past seven years.

The defendant is hereby granted 15 days from the date of this order to file an answer herein, and the effective date of this order shall be 15 days after the filing of said answer.

Further, the defendant's oral request to deposit with the Court under protest the amount in issue herein, as certified by the Commissioner of State Revenues, in lieu of compliance with this order to produce and to abide the final outcome of this action, is hereby granted.

The defendant objects to all of the foregoing and asks that the same be noted of record which is accordingly done.

This order made on October 10, 1957, but omitted from record at the time, is entered now for then.

/s/ MURRAY O. REED
Chancellor

11-12-57
Date

(Chancery Record 144, Page 470)

Opinion of Supreme Court of Arkansas, Filed December 22, 1958

GEORGE ROSE SMITH, *J.* This is an action by the State, on the relation of the Attorney General, to collect corporate franchise taxes, in the amount of $50 a year, for the past seven years. The merits of the case were not reached in the court below, as the appellant refused to comply with an interlocutory order requiring the production of certain records and permitted judgment to be entered by default as a means of obtaining a review of the production order.

Four days after the complaint was filed the plaintiff attempted to secure information about the appellant's activities in Arkansas by propounding interrogatories to the president of the Arkansas State Conference of NAACP Branches. The president refused to disclose a substantial part of the information requested, on the ground that it was privileged under the constitutional guaranties of free speech and assembly. The plaintiff then asked for an order directing the defendant to produce for inspection (1) records listing the names and addresses of the officers, agents, servants, employees, and representatives in Arkansas of the defendant and of its Arkansas Conference, (2) records listing similar information with respect to the defendant's local branches in Arkansas, (3) records, files, papers, correspondence, deposit slips, canceled checks, reports, and publications of the defendant and its Arkansas Conference, and (4) records listing the persons in Arkansas donating to the defendant and its Arkansas Conference during the past seven years, and the amount received from each.

This motion was resisted on the same ground of privilege. The defendant offered proof to show that if the identity of its officers and members were disclosed they might be subjected to harassment in the form of violence, bombing, the burning of crosses, anonymous telephone calls, and threatening letters. The court found that the requested

information was not privileged and granted the plaintiff's motion for production, except that item (4) was modified to require only a statement of the total donations and contributions from Arkansas for the past seven years. As we have indicated, the defendant refused to comply with the order and permitted the entry of a default judgment. The court found that the refusal was not willful and denied the plaintiff's motion that the defendant be punished for contempt.

We need consider only the two points argued by the appellant in its brief, for it abandons other errors by failing to argue them. *Connell* v. *Robinson*, 217 Ark. 1, 228 S. W. 2d 475. It is first contended that the appellant's membership lists are privileged under the guaranties of freedom of speech and of assembly. *NAACP* v. *Alabama*, 257 U. S. —, 2 L. Ed. 2d 1488, 78 S. Ct. —. In this particular case this contention is sufficiently answered by the fact that we do not construe the court's order as requiring the production of these lists. That information would doubtless have been available to the plaintiff had the court granted item (4) in the motion for production, for the names of persons donating or contributing to the appellant would have included the names of persons paying dues. But the court refused to order the disclosure of this information, which of course means that it was also excluded from the general language in the rest of the order. The State did not cross appeal from the court's refusal to order that the membership lists be produced.

Secondly, it is said that the plaintiff should have been required to show good cause for the production of the records. Ark. Stats. 1947, § 28-356. The record reflects, however, that the parties stipulated and orally agreed that the only issue on appeal would be whether the records are privileged. On the basis of this agreement the chancellor refused to impound the records pending appeal. Hence the appellant is not in a position to question the order on the ground now asserted.

Affirmed.

Decree

This cause came on to be heard upon the transcript of the record of the chancery court of Pulaski County, First Division, and was argued by solicitors; on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellee recover of said appellant all her costs in this Court, in this cause expended, and have execution thereof.

December 22, 1958

Order on Rehearing

The Petition for rehearing is denied; and Mandate of this Court is stayed pursuant to motion of appellant.

January 19, 1959

APR 13
JAMES R.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 772

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC. — *Petitioner*

v.

STATE OF ARKANSAS, *ex rel.* BRUCE BENNETT, ATTORNEY GENERAL — *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Arkansas is reported as *National Association for the Advancement of Colored People, Inc. v. State of Arkansas, ex rel. Bruce Bennett, Attorney General*, ... Ark. ..., at Law Reporter, Arkansas, Vol. 104, No. 13, p. 441, December 22, 1958, 319 S.W. 2d 33.

JURISDICTION

The jurisdictional requirements are adequately set forth in the petition below.

QUESTION PRESENTED

The issue is adequately stated in the petition.

STATEMENT

The following additional statement is submitted to the court. This was an original action in the Pulaski Chancery Court, Little Rock, Arkansas, against petitioner alleging they had operated in the State of Arkansas for seven years as a foreign corporation without paying the franchise tax of $50.00 per year under the corporate laws of the state. Arkansas law provides for an annual franchise tax of $50.00 per year for such corporations that fall in the classification as the petitioner herein. After the filing of the suit respondent proceeded under the discovery statutes of the state and propounded certain questions to petitioner's local representative, Daisy Bates. It should be noted that petitioner is domiciled in New York State and in turn charters so called "State Conference of Branches". The "State Conference" in turn charters "local branches". Petitioner through its local representative in answer to questions by respondent stated that they had "27 local branches" in Arkansas, but failed and refused to give names of the officers, agents, servants, employees and representatives of these 27 local branches (R. Exhibits 1 & 2).

ARGUMENT

The issue presented here is not similar to the case before the court in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, and the decision of the Supreme Court of Arkansas is not in conflict with that or any other decision of this Court.

I

Remembering that this was a suit for the collection of seven years franchise taxes it is readily apparent that the State of Arkansas needed and was entitled to the names of individual officers, agents, servants, employees and representatives of the local branches in order to subpoena them for the purpose of determining how long these local branches had been chartered by the Arkansas Conference of Branches. Had the case gone to trial on its merits respondent herein would have been in the untenable position of not knowing whom to subpoena. There is no question involving the immunity from the scrutiny of "rank and file" membership lists at any level of petitioner's organization, national, state or local since such membership lists have not been ordered disclosed by either the Chancery Court of Pulaski County or the Supreme Court of Arkansas. Respondent urges this Court to bear in mind that throughout the proceedings below petitioner apparently asserted a right to withhold all of the information requested and did not and has not complied with the order of the lower court. Not until the filing of the petition herein did petitioner admit the right of the State of Arkansas to have any of the information ordered disclosed. The information was sought in connection with a suit involving the payment of corporation taxes as required by Act 304, Ark. Acts of 1953, § 2 (compiled as Ark. Stats. [1947 (1957 Supp.)] § 84-1834). Petitioner

continues to object to the divulging of officers, agents, servants, employees and representatives of the Arkansas State Conference of Branches and local branches. The question of Arkansas' right to have the names of its "rank and file members" divulged as indicated on page 8 of petitioner's brief has not been urged and in that respect the brief is in gross error. As matters now stand (1) petitioner has not admitted its presence, conduct of activities or corporate tax liability in the State of Arkansas, except by allowing a default judgment to be taken against it, (2) prior to the filing of the petition herein petitioner has not offered to comply in any respect with the order of the Chancery Court of Pulaski County. In view of the above refusal to disclose the information required by court order it is obvious that the Attorney General of Arkansas was and is entitled to the information for the purpose of determining petitioner's status within the State of Arkansas.

II

This Court in *National Association for the Advancement of Colored People* v. *Alabama*, *supra*, inquired into ". . . the substantiality of Alabama's interest in obtaining the membership lists" involved. This was a fact question and the fact was determined that ". . . Alabama has fallen short of showing a controlling justification of the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have". Since the order of the Pulaski Chancery Court (R. 24 a & b) plainly shows that whatever the decision of this Court the records and other information will not be supplied to the Attorney General since petitioner has deposited the amount sued for in the registry of the court and will forfeit same should this Court hold that the records and information involved herein are non-privi-

legal. Petitioner is either asking this Court to go one step further than the *National Association for the Advancement of Colored People* v. *Alabama* ruling and hold that as a matter of law such records are privileged or is asking this Court to rule on an academic question of fact which under the circumstances can serve no useful judicial purpose.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

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BEN J. HARRISON
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